REMARKS/ARGUMENTS

Claims 30-70 are pending.

Applicant notes with appreciation the indicated allowability of claims 15 and 27-29.

The Examiner has indicated that the claimed priority under 35 USC §119(a)-(d) cannot be based on the application filed in the EPO since the United States application was filed more than twelve months thereafter. However, applicant wishes to point out that the present application is a continuation-in-part application based on earlier filed application No. 09/655,203 and thus, the present application is entitled to the priority claim in the parent application except for any new matter that has been added. Accordingly, it is respectfully requested that the priority claim be reinstated .

Claims 27-29 were objected to for an informality. Applicant has canceled claims 27-29 and incorporated the subject matter in the newly added claims. Accordingly, it is respectfully submitted that the objection to the claims is now moot.

Claims 5, 6, and 17-26 were rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention. Claims 5, 6 and 17-21 have been canceled and their subject matter has been incorporated into newly added claims. Accordingly, in adding the new claims, applicant have addressed the concerns of the Examiner. Accordingly, it is respectfully submitted that all claims pending now fully comply with 35 USC §112 and therefore, it is respectfully requested that the rejection be withdrawn.

Claims 1-26 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 38-75 of copending Application 09/655,203. Accordingly, applicant submits herewith a terminal disclaimer.

Claims 1-3, 7, 9-11 and 20 were rejected under 35 USC §102(b) as being anticipated by Starkie et al (WO 86-00636).

Claims 1, 2, 5-7, 9-14, 16, 21 and 22 were rejected under 35 USC §102(b) as being anticipated by Dean, Jr. et al. (U.S. Patent No. 4,978,616).

Claims 17-19 and 23-26 were rejected under 35 USC §103(a) as being unpatentable over Dean, Jr. et al.

Claims 4 and 8 were rejected under 35 USC §103(a) as being unpatentable over either of Dean, Jr. et al. or Starkie et al. taken in view of Reh et al. (U.S. Patent No. 5,538,262).

These rejections are respectfully traversed and reconsideration is respectfully requested.

In the newly added claims, the term "substance" has been defined as "consisting of one of a tissue part, a scaffold having cells deposited thereon, and a scaffold including a tissue part thereon" (claims 38 and 44), and "consisting of at least one of a tissue part, a scaffold having cells deposited thereon, and a scaffold including one or more tissue parts thereon" (claim 65).

It is respectfully submitted that the term a "substance" is explained in paragraph two on page 1 of the present application. However, there is a translation error in the text at that point. Thus, the substitute specification has been created so that it now reads "the tissue carrier and/or the tissue which is formed on it is designated as 'substance' in the following." Thus, the term a "substance" has three meanings: (i) a scaffold (being synonymous with a tissue carrier) having cells deposited thereon; (ii) a scaffold including a tissue part thereon; or (iii) a tissue part (in case a scaffold has disintegrated (or an existing tissue part has been used as scaffold)).

Claims 27-29 have been rewritten as claims 65-67. Additionally, claims 7, 27 and 28 have been combined as new claim 70. Accordingly, it is respectfully submitted that these claims are allowable since the Examiner indicated that claims 27 and 28 were directed to allowable subject matter.

Claim 30 is directed to a method for floating at least one substance for growing a tissue part in a bioreactor, wherein the method comprises, among other things, "providing at least one substance consisting of one of a tissue part, a scaffold having cells deposited thereon, and a scaffold including a tissue part thereon." It is respectfully submitted that none of the cited references, either alone or in combination, teach, disclose or even suggest such a method and therefore, claim 30 is allowable.

Claims 31-36 depend, either directly or indirectly, on claim 30 and therefore, they are allowable for a least the reasons claim 30 is allowable.

Claim 36 is directed to a bioreactor comprising, among other things, "at least one substance consisting of one of a tissue part, a scaffold having cells deposited thereon, and a scaffold including a tissue part thereon, wherein the substance is acted upon with fluid." It is respectfully submitted that none of the cited references, either alone or in combination, teach, disclose or even suggest such a bioreactor and therefore, claim 36 is allowable.

Claims 36-56 and 65-69 depend, either directly or indirectly, on claim 36 and therefore, they are allowable for a least the reasons claim 36 is allowable.

Claim 57 is directed to a method for floating a substance for growing a tissue part in a bioreactor, wherein the method comprises, among other things, "providing at least one substance consisting of at least one of a tissue part, a scaffold having cells deposited thereon, and a scaffold including one or more tissue parts thereon." It is respectfully submitted that none of the cited references, either alone or in combination, teach, disclose or even suggest such a method and therefore, claim 57 is allowable.

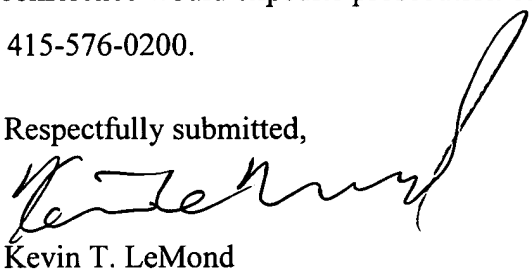
Claims 58-64 depend, either directly or indirectly, on claim 57 and therefore, they are allowable for a least the reasons claim 57 is allowable.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



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